

RECORDATION NO. 5707 Filed & Recorded COUNTERPART NO. 3  
MAY 7 - 1970 - 1 10 PM OF 6 COUNTERPARTS  
INTERSTATE COMMERCE COMMISSION

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AGREEMENT

Dated as of May 1, 1970

Between

THE CHESSIE CORPORATION

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

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Covering

450 100-Ton Mill Type Gondola Cars

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THIS AGREEMENT, dated as of May 1, 1970, by and between THE CHESSIE CORPORATION, a Delaware corporation (Manufacturer), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (B&O);

WITNESSETH:

The Manufacturer and B&O heretofore entered into a letter Agreement dated May 1, 1970 (a copy of which letter Agreement is made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to B&O at Raceland, Kentucky, and B&O agreed to accept and pay for 450 100-ton mill type gondola cars (Cars), to bear B&O road numbers 370100 - 370549, inclusive.

Delivery of the Cars by the Manufacturer to B&O is scheduled to begin on or about May 12, 1970. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to an Equipment Trust Agreement to be dated as of May 1, 1970), it is not in position to accept delivery of and pay for the Cars under the terms of the letter Agreement at this time. B&O represents that such financing arrangements will be consummated, however, on or before August 1, 1970. B&O (in order that it may use the Cars pending completion of such financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O and B&O hereby accepts from the Manufacturer the Cars as

of the date each of them is delivered to B&O at Raceland, Kentucky, for the period ending on the earlier of August 1, 1970, or the date of consummation of said financing arrangements. At such time, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

B&O agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and

- (b) pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, operation, management or handling of the Cars by B&O during the term of this Agreement.

B&O's obligations contained in this paragraph shall survive the termination of this Agreement.

B&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to B&O it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Car, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT  
TRUST OF 1970,  
MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
TRUSTEE, OWNER, LESSOR"

B&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Car, B&O shall immediately cause the same to be restored or replaced.

B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Cars, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take, and pay for the Cars in accordance

with the terms of the letter Agreement or impair any of the Manufacturer's rights under the letter Agreement.

Attest:  
(Corporate Seal)

THE CHESSIE CORPORATION

R. J. Howard  
Assistant Secretary

By J. C. Fyfe  
Treasurer

Attest:  
(Corporate Seal)

THE BALTIMORE AND OHIO RAILROAD  
COMPANY

R. J. Howard  
Assistant Secretary

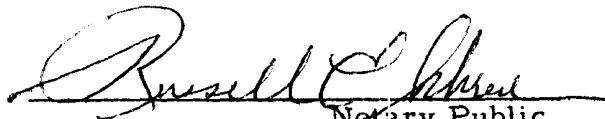
By J. C. Fyfe  
Treasurer

Attd. as to  
Legal Form  
R. J. H.  
Asst. Gen. Sol.

STATE OF MARYLAND )  
 ) SS:  
CITY OF BALTIMORE )

On this 6th day of May, 1970, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is the Treasurer of The Chessie Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)


  
Notary Public  
My Commission expires July 1, 1970  
RUSSELL E. SCHREIBER  
NOTARY PUBLIC  
My Commission Expires July 1, 1970

STATE OF MARYLAND )  
 ) SS:  
CITY OF BALTIMORE )

On this 6th day of May, 1970, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is the Treasurer of The Baltimore and Ohio Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

RUSSELL E. SCHREIBER  
NOTARY PUBLIC  
My Commission Expires July 1, 1970

  
Notary Public  
My Commission expires July 1, 1970